

(3) *Lender location.* Each lender must maintain an office (either its main or branch office or that of an agent) near enough to the collateral's location so it can properly and efficiently discharge its loanmaking and loan servicing responsibilities.

(4) *Conflict of interest.* The Agency shall determine whether such ownership or business dealings are sufficient to result in a conflict of interest or an apparent conflict of interest. All lenders will, for each proposed loan, inform the Agency in writing and furnish such additional evidence as the Agency requests as to whether and the extent for those loans covered by Form RD 449–35, the lender or its principals or officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other.

(i) For those loans covered by Form FmHA or its successor agency under Public Law 103–354 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other; or

(ii) For Farm Credit Programs loans covered by Form FmHA or its successor agency under Public Law 103–354 1980–38, the lender or its officers, directors, principal stockholders or other principal owners or the borrower or its officers, directors, stockholders or other owners have any business dealings with, or hold any stock or other evidence of ownership in, the other.

(5) *Debarment.* See subpart M of part 1940 (available in any Agency or its successor agency under Public Law 103–354 office).

(c) *Substitution of lenders.* With written concurrence of the Agency or its successor agency under Public Law 103–354, another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment provided the borrower, loan purposes, scope of project and loan terms remain unchanged.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 54 FR 14334, Apr. 11, 1989; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 64 FR 7402, Feb. 12, 1999]

§§ 1980.14–1980.19 [Reserved]

§ 1980.20 Loan guarantee limits.

(a) Lenders and applicants will propose the percentage of guarantee. The Agency will set the percentage of guarantee. The maximum percentage of guarantee will be ninety percent. Also, the maximum loss covered by Form RD 449–34 (available in any Agency office) can never exceed the lesser of:

(1) The percentage of guarantee of principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), any loan subsidy due, and the percentage of guarantee of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with the Agency or its successor agency under Public Law 103–354's authorization; or

(2) The percentage of guarantee of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

(b) The Agency or its successor agency under Public Law 103–354 will determine the percentage of guarantee after considering all credit factors involved, including but not limited to:

(1) *Applicant's management.* The applicant's management, and when appropriate, equity capital, history of operation, marketing plan, raw material requirements, and availability of necessary supporting utilities and services.

(2) *Collateral.* Collateral for the loan.

(3) *Financial condition.* Financial condition of applicant or applicant's principals if appropriate.

(4) *Lender's exposure.* The lender's exposure before and after the loan.

(5) *Trends and conditions.* Current trends and economic conditions.

[54 FR 1548, Jan. 13, 1989, as amended at 54 FR 42482, Oct. 17, 1989; 55 FR 137, Jan. 3, 1990; 58 FR 34307, June 24, 1993; 60 FR 53255, Oct. 13, 1995; 61 FR 67633, Dec. 23, 1996; 62 FR 9357, Mar. 3, 1997; 64 FR 7402, Feb. 12, 1999]

§ 1980.21 Guarantee fee.

The fee will be the applicable rate multiplied by the principal loan amount multiplied by the percent of guarantee, paid one time only at the

time the Loan Note Guarantee is issued.

(a) The fee will be paid to the Agency by the lender and is nonreturnable. The lender may pass on the fee to the borrower.

(b) Guarantee fee rates are specified in exhibit K of RD Instruction 440.1 (available in any Rural Development Office).

[64 FR 7402, Feb. 12, 1999]

§ 1980.22 Charges and fees by lender.

(a) *Routine charges and fees.* The lender may establish the charges and fees for the loan, provided they are the same as those charged other applicants for similar types of transactions. "Similar types of transactions" means those transactions involving the same type of loan requested for which a non-guaranteed loan applicant would be assessed charges and fees.

(b) *Late payment charges.* Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) *Routine.* They are routinely made by the lender in all types of loan transactions.

(2) *Payments received.* Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

(3) *Calculating charges.* The lender agrees with the applicant in writing that the rate or method of calculating the late payment charges will not be changed to increase charges while the Loan Note Guarantee is in effect.

[48 FR 30947, July 6, 1983, as amended at 50 FR 39884, Sept. 30, 1985; 58 FR 48291, Sept. 15, 1993; 64 FR 7402, Feb. 12, 1999]

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA or its successor agency under Public Law 103-354 will not guarantee any loan or line of credit made with the proceeds of any obligation the

interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit nor may an FmHA or its successor agency under Public Law 103-354 guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA or its successor agency under Public Law 103-354 may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

[50 FR 39884, Sept. 30, 1985]

§§ 1980.24-1980.39 [Reserved]

§ 1980.40 Environmental requirements.

The need for an Environmental Impact Statement (EIS) will be determined by the FmHA or its successor agency under Public Law 103-354 approval official. The determination will be based upon FmHA or its successor agency under Public Law 103-354's completion of the appropriate environmental review and Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," when required as set forth in subpart G of part 1940 of this chapter and other agency comments or other information available. If an EIS is necessary, applicants and lenders will be required to provide essential data for use in its preparation. FmHA or its successor agency under Public Law 103-354 State Directors will coordinate preparation and processing of any required EIS. If joint financing for the proposal is involved, the lead agency will be responsible for preparation of the EIS. In all cases, FmHA or its successor agency under Public Law 103-354 is responsible for assuring that the requirements of section 102(2)(c) of